

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
AUGUST 3, 2010**

**CALL TO
ORDER**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Gina Klempel, Scott Hollinger, Mark Hash, Gary Krueger and Craig Wagner. Bailey Iott, Allison Mouch and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 30 people in the audience.

**APPROVAL OF
MINUTES**

Wagner motioned and Krueger seconded to approve the July 6, 2010 minutes. The motion passed unanimously.

**PUBLIC
COMMENT
(not related to
agenda items)**

Olaf Irvin explained why Marvin FCU 10-13 was postponed.

**ZOLLINGER
(FCU 10-08)**

A request by Jeannine Zollinger for a Conditional Use Permit to allow a family hardship dwelling within the West Valley Zoning District. The property is located at 161 West Valley Acres.

STAFF REPORT

Bailey Iott reviewed Staff Report FCU 10-08 for the Board.

**BOARD
QUESTIONS**

Wagner asked what the hardship was.

Iott said the applicant needed to have her daughter on the property to care for her. Staff could not legally ask what the hardship was.

**APPLICANT
PRESENTATION**

Belinda Erickson, daughter of the applicant, said the reason for the hardship was because of health reasons, mostly concerning her mother's back. Her mother wanted her to take care of her.

**BOARD
QUESTIONS**

The board and applicant discussed who the hardship dwelling would be for, the size of the structure, the operation of a kennel on the property, the road user's agreement, and the license for the kennel.

**PUBLIC
COMMENT**

James Kola, 158 West Valley Acres, had several visual aides which he presented with questions he had concerning the application. He was against the application.

Kari Bordman, 145 West Valley Acres, was against the application.

Dawn Olson, 157 West Valley Acres, was against the application.

Ed Meyers, 180 West Valley Acres, passed out a handout to the board. He was against the application.

Rick Couture, 149 West Valley Acres, was for the application.

**STAFF
REBUTTAL**

Iott clarified the issues with landscaping brought up in the public comment period, violations which had been filed with the office, the definition of multi family dwelling, staff's enforceability of covenants, and the proposed conditions by the neighbors.

**BOARD
DISCUSSION**

Klempel and Iott discussed the issue of a foundation for the dwelling and how many home based businesses were allowed in the West Valley district.

**APPLICANT
REBUTTAL**

Erickson clarified issues brought up in the public comment period which included dogs barking, fencing, the cleanup of the property, automotive issues concerning the cars on the property, the type of home which would be used for the hardship dwelling, and green houses which allegedly were being used to grow marijuana being included under agriculture which was a permitted use in West Valley.

**BOARD
DISCUSSION**

The Board and Staff discussed at length the issue of multiple primary uses in West Valley, single family dwellings, the definition of a family hardship dwelling and how it applied to this situation, how large the temporary structure could be, landscaping, what happened once the person who needed care no longer resided on the property, and the criteria for a hardship dwelling.

The board, applicant, and staff also discussed lighting for the property, if the dwelling could be permanently attached and if the septic permit had been applied for.

The board and staff discussed at length if a family hardship dwelling was considered a permitted or conditional use in West Valley. They also discussed neighborhood plans and what happened if the plans were not updated in a timely fashion to comply with the growth policy.

**MAIN MOTION
TO ADOPT
F.O.F., AMEND
CONDITION #
AND APPROVE
(FCU 10-08)**

Hash made a motion seconded by Wagner to adopt staff report FCU 10-08 as findings-of-fact, and approve the request for a conditional use permit for a family hardship dwelling subject to the 8 conditions, with an amendment to Condition #5 as follows:

Condition #5 – ~~All proposed lighting on the family hardship dwelling shall be shielded/downward pointing and directed in such a way that it lights only the intended area and does not intrude into roadways or onto adjoining properties in compliance with Section 5.12 of the Flathead County Zoning Regulations. No yard flood lights are allowed.~~

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.,
AMEND
CONDITION #
AND APPROVE
(FCU 10-08)**

On a roll call vote the motion passed 3-2 with Klempel and Krueger dissenting.

**RE-HEARING
NODDING
ONION
(FZV 09-08)**

A request by Nodding Onion, LLC for a Zoning Variance to property within the Lower Side, I-1H (Light Industrial Highway) Zoning District. The applicants are requesting a re-hearing of the original variance to Section 3.28.050 (1)(D) of the Flathead County Zoning Regulations which states all private drives, access roads and required customer/employee parking areas to be a hard surface using either asphalt or concrete. The property is located 980 Demersville Road in Kalispell.

STAFF REPORT

Allison Mouch reviewed staff report FZV 09-08 for the board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Zac Andrews, 2150 Riverside Road, Bigfork, spoke about alternative B proposed by staff not being an alternative; the property would not be paved. They hoped that they could come up with some sort of solution that solved the problems they had right now. They did not think the regulations really applied to them and went on to explain at length why.

**BOARD
QUESTIONS**

None.

**PUBLIC
COMMENT**

Paul D. Wachholz, 183 Fairway Blvd, was against the application.

Cork Andrews, 629 Lower Valley Road, rebutted several of the issues Wachholz raised in his public comment. He said they had done everything the board had requested at the last meeting where this application was heard.

**STAFF
REBUTTAL**

Mouch suggested processes the board might want to consider if they approved the application.

**BOARD
DISCUSSION**

The Board, applicant and Wachholz discussed at length the issues of connecting to the public sewer and water.

The board and staff discussed the possibility of special privilege being conferred, the feasibility of alternative B, the fairness of removing the paving requirement, and if wetlands were on the property.

The board, applicant and staff discussed if the applicant needed to apply for a conditional use for each additional building, the timeline of the construction of the existing drainage plan, and the hardship of the previous buildings.

The board and staff discussed wording for a motion.

**MAIN MOTION
TO ADOPT
F.O.F., ETC
AND APPROVE
(FZV 09-08)**

Krueger made a motion seconded by Wagner to adopt staff report FZV 09-08 as Findings of Fact, with the addition of Finding #12, and approve the applicant's original variance request to the paving requirement; the additional finding crafted by the Board and planning staff reads as follows:

Finding 12: *Based on the reconsideration of the variance by the Board of Adjustment in response to original Condition #2, and based on written comment provided by the Montana Department of Environmental Quality regarding the paving required of Design Alternative "B", the Board finds the hardship is related to topography, unique to the property and beyond the control of the applicant. Any other findings found to be in conflict with this finding established by the Board shall be eliminated.*

**BOARD
DISCUSSION**

Hash said he sympathized with both sides. He was looking for a stronger letter from DEQ. He was not in favor of voting for the application.

The board discussed if they were creating deference and setting a precedent if they passed this application.

**ROLL CALL TO
ADOPT F.O.F.,
ETC AND
APPROVE
(FZV 09-08)**

On a roll call vote the motion passed 4-1 with Hash dissenting.

**BOARD
DISCUSSION**

Mouch asked for clarification on the motion and said the board needed to amend the original Nodding Onion CUP to coincide with the variance.

Staff and board decided to amend the CUP at the next board meeting on 9/7/10.

**WHISTLING
ANDY INC.
(FCU 10-10)**

A request by Whistling Andy, Inc. for a Conditional Use Permit to operate a distillery and tasting room (tavern) within the Bigfork, B-2 (General Business) Zoning District. The property is located at 8541 MT Highway 35 in Bigfork.

STAFF REPORT

Andrew Hagemeyer reviewed Staff Report FCU 10-10 for the Board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Mike Marquetti, 20339 MT Hwy 35, said they agreed with the conditions. They spoke with Hagemeyer about condition #1 concerning building design. They agreed with all the findings in the report.

**BOARD
QUESTIONS**

The Board and applicant discussed if they would be looking for an all beverage license in the future and access to several of the parking spaces near the neighboring property.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

Grieve asked who Whistling Andy was for curiosity's sake.

Marquetti elaborated.

**BOARD
DISCUSSION**

The board and applicant briefly discussed the starting time for the construction and the opening schedule.

**MAIN MOTION
TO ADOPT AS
F.O.F, AMEND
CONDITION 1
AND APPROVE
(FZV 10-10)**

Wagner made a motion and Klempel seconded to adopt staff report FCU-10-10 as findings of fact and approve the report with an amendment to condition #1.

#1. The footprint of the existing building shall not be expanded *on the sides and can the applicant add the façade as proposed onto the front.*

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT AS
F.O.F, AMEND
CONDITION 1
AND APPROVE
(FZV 10-10)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Klempel recused herself from the next application.

**ROBERT
KRAUSE
(FCU 10-09)**

A request by Robert Krause for a Conditional Use Permit for an extractive industry to remove four to five inches of topsoil on property located within the Bigfork, SAG-10 (Suburban Agricultural) Zoning District. The proposal site is located at 320 Coverdell Road.

STAFF REPORT

Andrew Hagemeyer reviewed Staff Report FCU 10-09 for the Board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Lois Krause, wife of the applicant, said they were basically applying for the conditional use permit to supplement their social security.

**BOARD
QUESTIONS**

None.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

The board, staff and applicant briefly discussed the short form handed to staff before their presentation by the applicant.

**MAIN MOTION
TO ADOPT AS
F.O.F AND
APPROVE
(FCU 10-09)**

Wagner made a motion seconded by Hash to adopt staff report FCU 10-09 as findings-of-fact as recommended by staff and approve.

**BOARD
DISCUSSION**

Krueger brought up hours of operation and wanted consistent hours with the rest of the pits in the valley.

**SECONDARY
MOTION TO
AMEND
CONDITION #5
(FCU 10-09)**

Krueger motioned and Wagner seconded to amend condition 5 as follows:

#5. Hours of operations shall be limited to 7:00 am to ~~6:00 pm~~ 7:00 pm Monday through Saturday April through October.

**VOTE TO
AMEND
CONDITION #5
(FCU 10-09)**

The motioned passed unanimously.

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
ADOPT AS
F.O.F. AND
APPROVE AS
CONDITIONED
(FCU 10-09)**

On a roll call vote the motion passed unanimously.

**JOHN AND
JOYCE O'HARA
(FCU 10-14)**

A request by John & Joyce O'Hara and Bob & Kathy Reiswig for a Conditional Use Permit to operate a tavern which would be specific to the saloon element of the Northern Lights Saloon and Café within the North Fork Zoning District. The property is located at 255 Polebridge Loop Road.

STAFF REPORT

Alex Hogle reviewed Staff Report FCU 10-14 for the Board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

John O' Hara, 1661 Paradise Ridge Trail, gave a brief recount of his history in Montana and of the Northern Lights Café and Saloon and why he had applied for the conditional use permit.

Bob Reiswig gave his history and the history of his acquisition of the property and the improvements which had gone into the property so far.

**BOARD
QUESTIONS**

The board and Reiswig discussed a sanitation permit for the property, improvements planned in the future on the system, and the hours of operation.

**PUBLIC
COMMENT**

Greg Puckett, 8855 North Fork Road, was for postponement of approval of the application until further information was gathered on issues he raised.

**STAFF
REBUTTAL**

Hogle spoke on the topic of the floodplain, explained the location had not been mapped by FEMA and was not considered in the floodplain at this time.

**APPLICANT
REBUTTAL**

O'Hara clarified and addressed the issues Puckett had raised.

Reiswig clarified an issue raised by Puckett concerning a reception.

**BOARD
DISCUSSION**

The board and applicants discussed private versus public property and the open container law and the location of the well and septic system.

The board and staff discussed at length conditions which reference other agency items which the county would be enforcing; the pros and cons of including those conditions, the possibility of striking the conditions, and where cross referencing should or shouldn't be included in the findings or conditions.

**MAIN MOTION
TO ADOPT AS
F.O.F AND
ADOPT
CONDITIONS 1-
6 AND 11-13
AND APPROVE
(FCU 10-14)**

Hollinger made a motion seconded by Wagner to adopt staff report FCU 10-09 as findings-of-fact adopt Conditions 1-6 and 11-13, and approve the conditional use request.

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE TO
ADOPT AS
F.O.F AND
ADOPT
CONDITIONS 1-
6 AND 11-13
AND APPROVE
(FCU 10-14)**

On a roll call vote the motion passed unanimously.

OLD BUSINESS

None.

NEW BUSINESS

The board and staff discussed the process of CUPs and if there could be notice that the public needed to check with the office before starting work on the project and budget issues.

Hash asked to be excused from the meeting.

The board and staff discussed at length what the proper procedure and timelines for text amendments were and if issues were put on a list to be resolved such as text amendments. They also discussed the issue of covenants and who enforced them and how a violation was resolved.

ADJOURNMENT

The meeting was adjourned at approximately 9:10 pm. on a motion by Wagner. The next meeting will be held at 6:00 p.m. on September 7, 2010.

Scott Hollinger, President

Donna Valade, Recording Secretary

APPROVED AS **SUBMITTED**/CORRECTED: 9/7/10